

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Applications of

LOCAL TELEVISION ASSOCIATES, INC.

CHARLES FITZGERALD

WEBBER/MOORE BROADCASTING COMPANY
LIMITED PARTNERSHIPFor Construction Permit for a New
Commercial Television Station on
Channel 35 at Jacksonville,
North Carolina

MM DOCKET NO. 92-309

File No. BPCT-911106KF

File No. BPCT-920114KF

File No. BPCT-920114KG

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYTO: The Honorable Joseph Chachkin
Administrative Law JudgeSUPPLEMENT TO
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Charles Fitzgerald ("Fitzgerald") and Local Television Associates, Inc. ("LTA"), by their attorneys, hereby supplement the Joint Petition For Approval of Settlement Agreement filed in the above referenced proceeding on February 1, 1993. In that Joint Petition, the parties had proposed the dismissal of the Fitzgerald application, with Mr. Fitzgerald assuming an equity position in the LTA application. After further consideration, Mr. Fitzgerald has decided not to participate in the LTA application, but to instead seek dismissal of his application in exchange for reimbursement of expenses. This supplement is to request approval for this modification to the settlement proposal presently pending before the Presiding Judge.

Along with the agreement with Webber/Moore Broadcasting Company Limited Partnership, which is already pending before the

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Presiding Judge, this agreement will achieve a swift resolution of the this proceeding. Fitzgerald and LTA (the "Parties"), through this Joint Request, seek Commission approval of the Agreement which is attached as Exhibit A.^{1/} The declarations of Charles Fitzgerald and a principal of LTA conforming to the requirements of Section 73.3525 of the Commission's Rules are also attached hereto as Exhibits B and C, respectively. Mr. Fitzgerald's declaration also explains why he has decided to abandon his application at this time.

Specifically, the Parties hereby respectfully request the Commission grant the following relief:

- (a) Grant of the LTA application;^{2/}
- (b) Dismissal of the application of Fitzgerald;
- (c) Approval of the Agreement between Fitzgerald and LTA.
- (d) Approval of the pending Agreement between LTA and Webber/Moore.

Grant of the requested relief will eliminate the need for further proceedings, achieve a universal settlement of this case consistent with the purposes of the Communications Act and the Commission's rules and policies, and will result in the

1/ As reflected in Exhibit B, Mr. Fitzgerald has given his Declaration in support of this settlement. Through inadvertence, Mr. Fitzgerald has not provided his signature to the Agreement in time for it to be included in this filing. Mr. Fitzgerald's signature page will be included tomorrow.

2/ This would include a grant of the satellite authorization request presently pending before the Judge.

commencement of broadcast service to Jacksonville, North Carolina and the surrounding area in an expeditious manner. Moreover, as set forth in LTA's Supplement to Petition For Leave to Amend and Request for Authority For Satellite Operation, filed concurrently herewith, a grant of the LTA application will be the only economically rational manner in which to activate this new television channel.

Pursuant to Section 73.3525, the Declarations attached as Exhibits B and C demonstrate that neither applicant filed their application for purposes of reaching a settlement. The

Parties, the Parties jointly request the Commission grant all relief herein requested.

Respectfully submitted.

EXHIBIT A

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement ("Agreement") is made this 6th day of April, 1993, by and between LOCAL TELEVISION ASSOCIATES, INC. ("LTA") and CHARLES FITZGERALD ("Settling Party"), (collectively, the "Parties").

WHEREAS, LTA has applied to the Federal Communications Commission (the "Commission") for authority to construct a new UHF television broadcast station (the "Station") on Channel 35 at Jacksonville, North Carolina (FCC File No. BPCT-911106KF, the "LTA Application"); and

WHEREAS, Settling Party has applied to the Commission for authority to construct facilities on the same channel (FCC File No. BPCT-920114KF, the "Settling Party Application"); and

WHEREAS, the Parties' applications are mutually exclusive with each other, and with the application of WEBBER/MOORE BROADCASTING COMPANY LIMITED PARTNERSHIP for the same facilities (FCC File No. BCPT-920114KG, "the Webber/Moore application"), and have been designated for comparative hearing in MM Docket No. 92-309, to determine which application should be granted; and

WHEREAS, a Settlement between LTA and Webber/Moore has been reached by which Webber/Moore will be dismissing its application in exchange for payment by LTA; and

WHEREAS, the Parties had previously entered into a Settlement Agreement dated January 29, 1993 which contemplated the merger of the LTA and Settling party applications but, after further negotiations and disclosures of information concerning the economic prospects of the station, Settling Party has decided not to merge, but to instead seek dismissal of his application in

exchange for reimbursement of his legitimate and prudent out-of-pocket expenses; and

WHEREAS, the Parties believe that this Agreement will be in the public interest in that it will resolve the pending proceeding before the Commission, and thereby permit the more prompt initiation of a new UHF television broadcast service to the community of Jacksonville, North Carolina; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Commission and the conditions herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

1. The Parties will supplement their joint petition ("Joint Petition") presently pending before the Presiding Judge pursuant to Section 73.3525 of the Commission's Rules, and request that the Presiding Administrative Law Judge:

- (a) approve this Agreement; and
- (b) dismiss the Settling Party Application with prejudice; and
- (c) approve the agreement between Webber/Moore and LTA; and
- (d) dismiss the Webber/Moore application with prejudice; and
- (e) grant the application of LTA, as amended on February 1, 1993 with respect to its authorization of the Station as a satellite of WFXI(TV), Morehead City, North Carolina.

The Parties shall file with the Joint Petition a copy of this Agreement together with all supporting documentation required by Section 73.3525 of the Commission's Rules.

2. LTA agrees to pay Settling Party, by certified or cashier's check or by wire transfer, as consideration for the foregoing and for the performance of the obligations of Settling Party hereunder, an amount of up to THIRTY THOUSAND DOLLARS, or such lesser amount as is documented and approved by the Commission as the bona fide expenses Settling Party has incurred directly in connection with the preparation and prosecution of his application and in connection with the negotiation of this agreement ("Settlement Sum"). In addition, if Settling Party is not refunded his hearing fee by the Commission, LTA agrees to reimburse him for an additional \$6,760. Settling Party shall bear the burden of demonstrating to the Presiding Judge that its expenses were reasonable, and will provide documentation supporting its assertion within five (5) days of the execution of this Agreement. Payment shall be made within ten (10) business days following the date on which an order or opinion of the Commission granting the LTA application becomes a "Final Order." For purposes of this Agreement, a "Final Order" is an order that is no longer subject to administrative or judicial reconsideration, review, appeal or stay under applicable statutes and regulations. To secure payment of the Settlement Sum, LTA shall place the Settlement Sum into an escrow account, or at its option shall provide to Settling Party a letter of credit from a Federally insured bank in the amount of the Settlement Sum, within thirty (30) days of the execution of this Agreement. The escrow deposit shall be released to Settling Party, or the letter of credit shall be payable to the Settling Party, at the time the Settlement Sum is due, as set forth herein.

3. No payments, other than the Settlement Sum specified in Paragraph 2, shall be made to Settling Party, and such sum shall be due only upon the tenth (10th) business day following finality of a grant of the LTA application, provided, however, that if the Settling Party's application is dismissed as a result of entering into this Agreement and such dismissal becomes a final action, then LTA shall pay Settling Party the entire Settlement Sum within six months such dismissal becoming final, whether or not the other preconditions to payment set forth hereunder are met.

4. Recognizing that this Agreement is expressly subject to the prior consent of the Commission and the need for Commission approval prior to its consummation, LTA and Settling Party shall cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be necessary or appropriate to comply with Section 73.3525 of the Commission's Rules. The Parties agree to provide the Commission in a timely manner with such information as it reasonably requests. The Parties further agree to use their best efforts in the preparation and filing of all Commission applications and related documents that

Paragraph 3. In the event these actions do not become a Final Order within one hundred eighty (180) days from the date of submission of this Settlement Agreement, either party may, at its option, terminate this Agreement, and in that event the proceeding will be restored to its prior status. If the pending request of LTA for authorization to operate the station as a satellite of WFXI is designated for hearing, then LTA shall have the option of terminating this Agreement, and in that event the Parties shall be returned to their prior status. The Parties acknowledge that LTA is requesting that the construction permit for the station be granted as a satellite of WFXI(TV), Morehead City, North Carolina, and that LTA will be filing an additional showing to support that request on the date of this agreement, and that a final resolution of that matter favorably to LTA is a condition precedent to the Parties' obligations under this Agreement.

6. This Agreement is the only agreement between the Parties hereto, and supersedes and replaces all prior agreements and understandings between the Parties. This Agreement contains all of the terms and conditions agreed upon with respect to the subject matter hereof and cannot be amended or modified except by an instrument in writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns. Each party warrants to the other that it has full power and authority to enter into this Agreement, and to perform its obligations hereunder. The Parties further represent and warrant that they are not under any restrictions, contractual or otherwise, which prevent or preclude

them from entering into this Agreement and from carrying out their obligations hereunder except for those set forth herein.

7. The Parties agree that this Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

8. This Agreement shall be construed under the laws of the State of North Carolina.

9. Specific performance shall be available as a remedy for breach of this Agreement in addition to other legal or equitable remedies available under this Agreement or under the laws of the State of North Carolina.

10. A notice, request, statement or other communication to be given hereunder will be in writing and will be sent by first-class mail, postage prepaid to the party as follows:

If to LTA:

John W. Gainey, III
Local Television Associates, Inc.
P.O. Drawer 2000
Morehead City, North Carolina 28557

With a copy to:

David D. Oxenford, Esq.
Fisher, Wayland, Cooper
and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037

If to Settling Party:

Charles Fitzgerald
825 Gum Branch
Jacksonville, NC 28540

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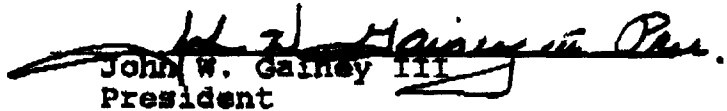
With a copy to:

Gregg Skall, Esq.
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006

or to such other address or to such other person as either party may designate by notice given in writing. Any notice, request, statement, or other communication will be deemed to have been given three days after it was mailed.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.

LOCAL TELEVISION ASSOCIATES, INC.


John W. Gainey III
President

Date: April 6th 1993

CHARLES FITZGERALD

Charles Fitzgerald

Date: April 6th 1993

EXHIBIT B

DECLARATION

I, Charles Fitzgerald, hereby declare under penalty of perjury:

1. I am an applicant for a new UHF television station at Jacksonville, North Carolina.

2. I have reached a settlement with Local Television Associates, Inc. ("LTA"), by which LTA will reimburse me for the expenses which I have legitimately and prudently incurred in the preparation, prosecution and settlement negotiations relating to my application. Other than as set forth in the Agreement with LTA, I have neither been promised nor paid for any additional compensation for the dismissal of my application.

3. My application was not filed for purposes of reaching a settlement. Instead, at the time I filed the application, I had wanted to build and operate a television station in Jacksonville.

4. However, as the process of prosecution of my application proceeded, I began to learn more about the changing economics of the television marketplace. Given the competition in the market in which the Jacksonville station would operate from another new station (WYDO, Greenville, North Carolina) and recent political developments which indicate that military spending on which the Jacksonville area is so dependant will likely be reduced substantially, I now believe that the best use of this allocation would be in conjunction with another nearby station.

5. LTA contacted me to inquire about settlement. I instructed my attorney to see if a settlement of this proceeding could be worked out in a way that allowed a new station to be

constructed in Jacksonville in a way which made maximum economic sense. After discussion, we decided to proceed in the manner set forth in the Settlement Agreement filed on February 1, 1993, where I would acquire an interest in a company which would operate the station as a satellite of LTA's station, WFXI(TV), Morehead City, North Carolina.

6. Since the filing of the February 1, 1993, Settlement Agreement, I have had further discussions. After review of the economic data collected for presentation to justify the satellite operation of this station, I have become convinced that the economics of the station will be extremely difficult as a stand-alone facility in Jacksonville. Thus, I have decided to seek dismissal of my application in exchange for reimbursement of my expenses, rather than participating with LTA in construction of the station.

7. A summary of my expenses are set out in pages attached to this Declaration. I certify that these expenses were legitimately incurred in connection with my application.

8. The foregoing is true and correct to the best of my knowledge and belief.


Charles Fitzgerald

Dated: April 6, 1993

EXHIBIT

Date	Description	Other	Rubin & Bednarek	Pepper & Corazzini	
1/9/92	Retainer P&C			5,000.00	5,000.00
1/9/92	FCC	2,535.00			2,535.00
1/10/92	Travel Agents- D.C.	576.00			576.00
1/30/92	Daily News- Public Notice	80.00			80.00
2/23/92	Invoice #001			883.26	883.26
2/23/92	Engineering		3,100.00		3,100.00
3/10/92	Engineering		482.25		482.25
3/10/92	Invoice #002			1,366.69	1,366.69
3/18/92	FCC Hearing Fee	6,800.00			6,800.00
5/15/92	??		6.75		6.75
4/5/92	Invoice #003			780.35	780.35
5/19/92	Invoice #004			156.40	156.40
				241.01	241.01

EXHIBIT C

DECLARATION

I, John W. Gainey III, hereby declare under penalty of perjury:

1. I am President of Local Television Associates, Inc. ("LTA"), an applicant for a new television station at Jacksonville, North Carolina.
2. LTA has reached an Amended Settlement Agreement with Charles Fitzgerald. Pursuant to that agreement, Mr. Fitzgerald will dismiss his application in exchange for reimbursement of expenses by LTA.
3. Other than the consideration as set forth in that agreement, LTA has neither promised nor paid any other consideration to Mr. Fitzgerald to induce him to dismiss his application.
4. LTA did not file its application for purposes of reaching a settlement.
5. Grant of the settlement will be in the public interest as it will allow Mr. Fitzgerald to receive reimbursement of his expenses, while rapidly initiating a first television service to Jacksonville, North Carolina in the only way that is economically feasible.
6. The foregoing is true and correct to the best of my knowledge and belief.


John W. Gainey III

Date: April 6, 1993

CERTIFICATE OF SERVICE

I, Valerie A. Mack, hereby certify that I have this 6th day of April, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT" to the following:

*Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

*Robert Zauner, Esq.
Hearing Branch, Mass Media Bureau
Enforcement Division
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Gregg P. Skall, Esq.
Pepper & Corazzini